

**7 Official Opinions of the Compliance Board 193 (2011)**

**Meeting – Determined not to be a meeting: Quorum not present**

May 23, 2011

*Complainants:*

*Mr. Cornelius Ridgely  
Ms. Judith Smith*

*Respondent:*

*Carroll County Commissioners*

We have considered the complaint of Mr. Cornelius Ridgely and Ms. Judith Smith, (“Complainants”) that the Board of County Commissioners of Carroll County (“Commissioners”) violated the Open Meetings Act on March 17 or 18, 2011 by communicating privately about public business. We conclude that the Commissioners did not violate the Act, because it did not apply to the communications in question.

Complainants allege that the Commissioners communicated about certain State laws on redistricting committees, reviewed a certain proposal, and voted to recommend it, all either in a closed meeting or by e-mail or other means of circulating messages. The Commissioners, a five-member body, respond that while they indeed conducted those activities outside of an open meeting, they did so not in a meeting, but rather by separate e-mail messages, a call between their president and one Commissioner, a conversation between the president and one Commissioner, and a message left with the Town Clerk for the president. The Commissioners attach various e-mails and relate the sequence of events. Although the president states in one e-mail that he “[s]poke to” two other commissioners, a reference that could suggest that a quorum of three had met, their narrative states that the president had spoken separately with each of those commissioners. In short, at no time did more than two Commissioners interact on this matter.

The Act applies only to meetings of a quorum of a public body to discuss public business. *See* State Government Article (“SG”), §10-505 (providing, “a public body shall meet in open session”) and SG §10-502(g) (defining “meet” to mean “to convene a quorum of a public body for the consideration or transaction of public business”). While other laws might require a public body to conduct certain business in a public meeting, the Act does not; rather, it “simply sets rules that must be followed when a meeting subject to the Act occurs.” 6 *OMCB Opinions* 57, 61 (2008). The Act is the sole source of our authority, SG §10-502.4, and we therefore may only address allegations involving meetings within its definition of the term.

Here, the alleged communications were not made in a “meeting” as defined by the Act. In 1999, addressing a similar complaint about e-mail communications, we concluded that “an e-mail canvass of the members of a public body does not involve the convening of a quorum.” 2 *OMCB Opinions* 78, 78-79 (1999). And, in 1994, addressing a similar complaint about private conversations between two members of a city council which consisted of more than three members, we stated: “The Act was not applicable to whatever discussions may have occurred between any two members..., because no quorum was present at those discussions.” 1 *OMCB Opinions* 101, 102 (1994). Here, there is no indication that more than two Commissioners attended any telephone, e-mail, or face-to-face discussion about the redistricting committee.

We conclude that the Board of County Commissioners of Carroll County did not violate the Open Meetings Act when their president communicated with each commissioner out of the presence of the others. As in 2 *OMCB Opinions* 49, 50 (1999), another case in which a public body discussed public business through a series of communications between the chair and each member, we reach this result because “the Act’s definition of ‘meeting’ could hardly be more precise.” However, even though the *seriatim* contacts concerning the matter did not constitute a “meeting,” we emphasize a conclusion reached by us in the past: that “this way of proceeding deprives the public of an opportunity to observe the real decision-making process, for a subsequent open meeting to ‘ratify’ the decision...is a mere formality.” *Id.*

We have no authority to address whether this conduct violated other laws applicable to this public body.

OPEN MEETINGS COMPLIANCE BOARD

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